Department of Revenue

OFFICE Board of Keven

STATION Salaran.

No. 3712

Dated 17—12·37

(SUBJECT.)

Alienation - Land, revenue and Cudomai.
(Bellary) - Kudlihal Th - Kotturu Vill -
S No 684-3 Dt Board - Bellary - mala
Dispensary

BOARD OF REVENUE
Received
31 MAR 1937

Revenue DEPARTMENT.

Registered

From (Name) B.G. Blake Esq.,I.C.S..

(Designation) Collector,

Post Box ____, (Station) Bellary.

Telegraphic Address ____

To

The Secretary to the Board of Revenue,
Madras.

Sir. Ref. C.No. 5361/36, *dated* 30-3-37. 19

Buildings- Government- Bellary District- Kudligi taluk Kottur village- Old Chavadi- transfer to the District Board, Bellary- Orders requested.

A new type design chavadi was constructed recently at Kottur in Kudligi taluk of this district. The old chavadi which is in the interior of the village has been of no use to the Revenue department nor is it required by any other department of Government. The District Medical Officer Bellary recommended the transfer of the building to the District Board for use as rural dispensary. The District Board agrees to take over the building and to keep it in proper repairs. copy of the resolution of the District Board No. 23 dated 30th January 37 and the District Medical Officer's letter No. 1368/36 dated 9th December 36 are enclosed.

Copy of Proceedings of the District Board, Bellary dated 30th January 1937.

Medical Relief- Accommodation

Letter C.No. 5861/36 dated 17-12-36 of the Collector of Bellary requesting to ~~xxx~~ send a resolution consenting to keep the old chavadi at Kottur in proper repair in case it is transferred to the District Board for locating the Rural Dispensary.

Resolution No. 23.

The Board agrees to take it over and keep the chavadi in proper repairs.

True Copy.

Copy of letter No. 1368/36 dated 4th December 36 from the District Medical Officer Bellary.

Chavadi- Abandoned- Kottur village- Requirements.

As no better building is available in Kottur for Rural Dispensary I recommend that the chavadi be handed over for use as Rural Dispensary. The Chavadi is a much better building the the present dispensary building.

True Copy.

20-2-37.

For Collector.

A.S.N./23-3/P.

2313

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..		
When copied ...		
When examined..		
When signed ..	24/5	
When despatched.		

SUBJECT :— Alienation Land, revenue and building (Bellary) Kudligi Taluk Kothur V/g - Old Dharwar Rural Dispensary - District Board, Bellary

READ AGAIN ~~_____~~ Nil, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO* :—

No. B1796-37 From the Govt of Bellary Dept No. 5861-36 dated 20-3-1937 p14

" _____ " _____ " _____ " _____ 19____.

" _____ " _____ " _____ " _____ 19____.

~~Order Ms.~~
~~Resolution Rout.~~ No. B1796-37-1, dated 28-4-1937.

18-6-37 Bg 2916

The Collector is requested to submit proposals for the alienation of land, revenue and building in favour of the District Board, Bellary

C.F. 32.

In reply, please quote number, date and short title.*

Revenue DEPARTMENT.

Received *Registered*

From (Name) J. W. Pritchard Esq., I.C.S.,

(Designation) Collector

Post Box , (Station) Bellary

Telegraphic Address

BOARD OF REVENUE
13 SEP 1937
MADRAS

To

The Secretary to the Board of Revenue,

Madras.

Ref. *No.* 5861/36 A-1, *dated* 10th Septr. 19 37

Sir,

ENCLOSURES

SPARE COPIES

Alienation - Land Revenue and building - Kudligi taluk - Kottur village - old chavadi - Rural dispensary - District Board, Bellary.

Ref: Board's Ref. B.No. 1779/37-1 dated 28-4-1937.

The old chavadi at Kottur, Kudligi taluk, which is proposed to be alienated to the District Board, Bellary is in a big minor circuit field. The Inspecting Tahsildar has been asked to submit the necessary sub division records urgently. As soon as the sub division records are received proposals will be submitted to the Board.

For Collector.

Revenue DEPARTMENT.

Received ..... *Registered* B 5353 1796/37

From (Name) J.W. Pritchard Esq., I.C.S.,

(Designation) Collector,

Post Box ....., (Station) Bellary.

Telegraphic Address .....

BOARD OF REVENUE
1 NOV 1937
MADRAS

To

The Secretary to the Board of Revenue,
Madras.

Ref. C. No. 5861/36 A-1, dated 30-9-37. 19 .

Sir,

ENCLOSURES Two Sketches & one Extract Pth. Copies of BR's Resolution

SPARE COPIES .....

* Alienation- land revenue and building- Mudigi taluk Kottur village- old chavadi- Rural dispensary- District Board, Bellary- Proposals submitted.

Ref:- Board's Refce.No. B. 4779-37 dated 28-4-37.

Proposals for the alienation of the land revenue and building in favour of the District Board Bellary are submitted in the prescribed forms for necessary sanction. The District Board agrees to abide by the conditions laid down in B.S.O. 24(10) and also the special conditions applicable to buildings. Copies of the District Board resolutions and subdivision records of the land to be alienated are enclosed. There are no trees on the land to be alienated.

P98 9 1938 Vol 4 (C Sl p 09 89/35)

A.S.N./30-10P.

31-10-37

For Collector.

30/10/37

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying		
When copied		
When examined	17-11-	CM SR
When signed		
When despatched.	DESPATCHED 18 NOV 1937	

SUBJECT :— Alienation - land, revenue and building (Bellary) - Kudligi Tk - Kothur Vge - old chavadi - Rural dispensary - Dt Bd, Bellary Discrepancies - reconciliation of

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO* :—

D No. 5353 From the Coll of Bellary Ref No. C 5861/36 #1 dated 30-10-1937.

" _____ " _____ " _____ " _____ 19____.

" _____ " _____ " _____ " _____ 19____.

Ref ~~Order~~ ~~Ms.~~ ~~Resolution~~ ~~Rout.~~ No. B 1296/37-2, dated 16-11-1937.

In the application for alienation submitted by the Collector the annual ground rent against Col 2(a) is shown as Rs 0-6-0 while in the remarks col. it is shown as Rs 0-4. The figure entered against Col 2(b) has been calculated taking the ground rent as Rs 0-4-0. The Collector is requested to explain the discrepancies and to submit revised proposals.

GM 15/11/37

To The Coll of Bellary (by 15/11 with cadastral 15/11/37 11-23 cf)

(Sketches, Sub Dn statements & application for alienation)

In reply, please quote number, date and short title.*

Recei... Registered...

From (Name) E.C.Wood Esq., I.C.S.,

(Designation) Collector,

Post Box..., (Station) Bellary.

26 NOV 1937

Telegraphic Address...

The Secretary to the Board of Revenue,
Madras.

Ref. No. 5861-36, *dated* 23-11-37. 19 .

Enclosures 7 Sheets

Spare Copies...

Alienation. Land Revenue and building-(Bellary)-Kudligi taluk- Kottur village- old chavadi- rural dispen District Board Bellary- discrepancies- reconciled.

Ref:- Board's Rerce.B. 179637-2 dated 16-11-37.

The revised proposals are submitted. The figures entered against Column 2(b) and remarks column have now been correct as the figures 0-4-0 and Rs 6-4-0were incorrectly entered in the alienation statement. The mistake is regretted.

24/11-37

For Collect

A.S.N./24-11A.

22 11 37

District Bellary

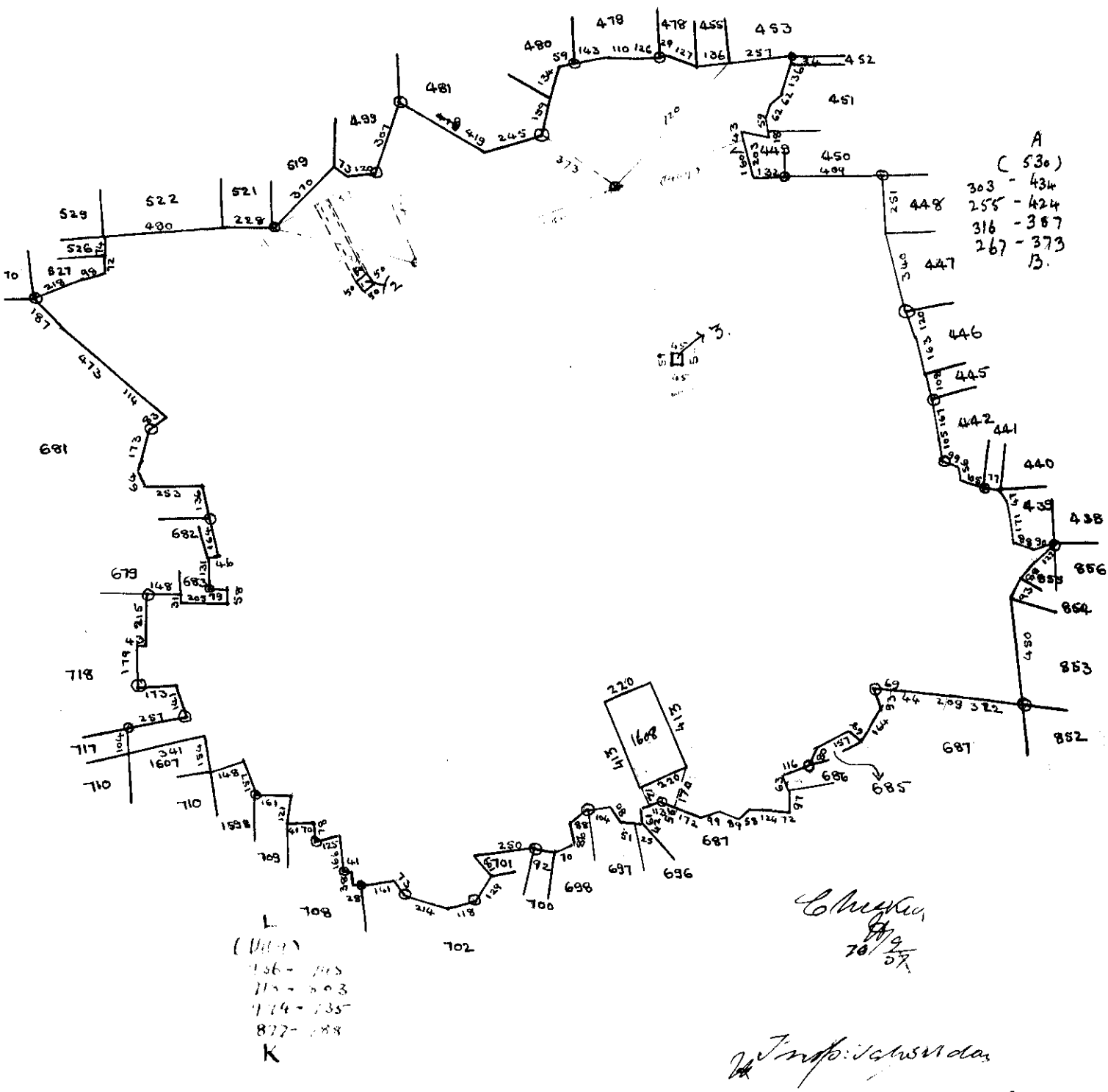
Taluk. Sandigi

Village

Field no. 684

Name Kattur

area 98.88 acres



Scale 1" = 5 Chains

Inspr. of Surveys

D. Ramalingam
CR Surveyor
19/9/37

Appendix VII. 7 వ అనుబంధము.

R. F. XVII-19—106,700—19-1-32.

S. O. No. 34 (*a*) 7, *Paragraph* 13 (*a*). స్టాండింగు ఆర్డరు నెం. 34 ఎ యొక్క 13 (a) పారగ్రాపు.

Statement of sub-divisions in the village of (No. 115 Kottur) Kudligi taluk, Bellary district

జిల్లా, తాలూకా, గ్రామములోని సబ్‌డివిజనుల యొక్క జాబితా మెంటు.

Number of present survey field or sub-division. ప్రస్తుతపు పొలము యొక్క లేదా సబ్‌డివిజను యొక్క నెంబరు. (1)	Its classification, survey, area and assessment.			Names of present registered holders. ప్రస్తుతపు రిజిస్టరు పట్టాదారుల పేర్లు. (5)	Particulars of the proposed sub-division. చేయనుద్దేశింపబడిన సబ్ డివిజను యొక్క వివరములు.					Names of proposed registered holders. ఈ క్రింద నిర్దేశింపబడిన రిజిస్టరు పట్టాదారుల పేర్లు. (11)	Signature of parties. పార్టీల సంతకములు. (12)	Remarks.				
	Dry, wet or poramboke. పుంజ, నంజ లేక పోరంబోకు. (2)	Survey area. సర్వే విస్తీర్ణము. (3)	Assessment. శిస్తు. (4)		Dry, wet or poramboke. పుంజ, నంజ లేక పోరంబోకు. (6)	Sub-division number or letter. సబ్‌డివిజను యొక్క నంబరు లేక అక్షరము. (7)	Extent according to the area square. కొలతలో సర్వేయరు పట్టీకారం విస్తీర్ణము. (8)	Adjusted extent with reference to column (8). 8-వ కాలము నంబరుతో సంబంధం ఉండిన విస్తీర్ణము. (9)	Assessment. శిస్తు. (10)			Are there well defined boundaries on the ground and whether the sub-divisions have been duly demarcated where necessary. భూమిమీద బాగుగా దిట్టంగానున్నవా, అవసరమున్న చోట్ల సబ్‌డివిజనులు కట్టుదిట్టముగా చేయబడినవా. (13)	Reasons for omissions, if any, on the part of parties to sign in column (12) 12-వ కాలములో పార్టీలు సంతకాలు చేయకపోయినట్లయితే అందుకు కారణములు. (14)	Reasons for sub-divisions. సబ్‌డివిజను చేయుటకు కారణములు. (15).	Number of sub-divisions in the field fit for clubbing and whether the holder thereof has any objection to that being clubbed. కలుపుటకు (క్లబ్‌బింగ్) తగిన పొలము నందు సబ్‌డివిజనులయొక్క సంఖ్యయు మరి వాటినికలుపుటకు పట్టాదారుడు ఏ విధమైన అభ్యంతరము చెప్పుచున్నాడా లేదా. (16)
		ACS. C. RS.					ACS. C.	ACS. C. RS. A.								
6 Sh-1	Por	98 86 2	Village Site	Por	1		98 82	98 82 . .								
				,,	3		. 3	. 3 . 6		At. Bd. Bellary		yes by.				
	Round Nim	Rs. 11.14 —					98 85	98 85 . . 6		proposed for		Field Stones				
										alienation for Rural.						
					2	2	3 0	3 — 6		dispensary						

Note.—(1) The actual area of the new sub-divisions should first be computed by means of the area square paper and then adjusted in accordance with the directions given in Appendix VIII Board's Standing Order No. 34-A. The former extent should be noted in column (8) and the latter in column (9) of the sub-division statement.

(2) Details must be given in columns (1)—(5) for the sub-divisions mentioned in column (16) as fit for clubbing.

P. Ramachandrudu 19/9/32

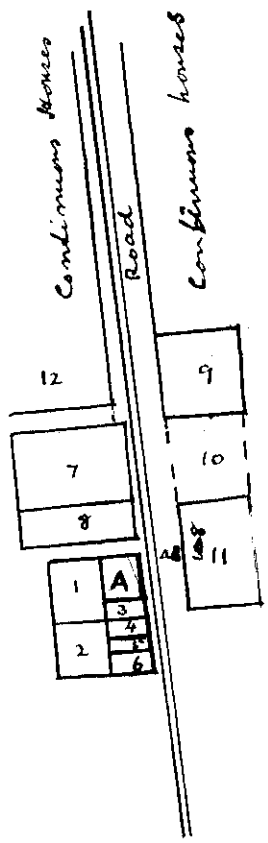
K. Hammanthaiah

గమనిక.—(1) మొదటియాక్ష్మాయిషు చేసిన మూలముగా పరిశీలనలోనున్న కొత్త సబ్‌డివిజనుల అసలు విస్తీర్ణములు యీర్పరచబడి తదుపరి బోర్డు స్టాండింగు ఆర్డరు నెం 34 ఎ లు (8) దానిమీదవ అనుబంధములో పూర్వపు విధానమును (అజ్ఞప్తిచేయబడిన) విస్తీర్ణమును కనుపరచవలెను.

(2) 16 వ కలములో చేర్చినబడిన సబ్‌డివిజనులు కలుపుటకు తగియున్నవని చూపుటకుగాను 1 నుండి 5 వరకుగల కలములలో వివరములు యివ్వబడవలెను.

Sketch showing the topo details around the old Govt. Chavady proposed to be alienated in favour of District Board Bellary.

(1469)



Reference

A. Old chavady to be alienated

Houses of

1 Kudligi Rachappa
2 Bellappa
3 Harahal Kolāppa
4 Devaranavane Nagavva
5 Devaranavane Siddalingavva
6 Sree Basavanna gudi
7 Sree Kollu Basavanneswara Swami temple
8. Kollu Mutt.
9 Gudi Kolra Basavva
10 Vacant site
11 Ayyanahalli Cherma Basappa
12 Salra Kolra Basappa.

Checked
20/4/37

By Topo: Tahsildar

Scale 1" = 2 chains

P. Ramachandra
19/4/37

Application for the alienation of land revenue payable to Government in Bellary District- Kudligi taluk-Kottur village

1. Description and area. S.No. 684-3 0.03 cents village site.

2. (a) Annual ground rent ~~Rs 0-6-00~~ Re 0-6-0

(b) Capitalised value (25 times ground rent) (Rs 6-4-0) 7-6-0

3. Alienee and purpose of alienation President District Board, Bellary.

To locate the Rural dispensary.

The land revenue Rs 0-6-0(groundrent) may be alienated. The District Board agrees to abide by the conditions in B.S.O. 24(10) and also the special conditions applicable to the alienation of buildings.

Matty. 31-10-37.
For Collector.

30-10-37

Application for the alienati__ _f land in which the proprietary right belongs to the State- Bellary District- Kudligi taluk- Kottur village.

1. Description and area.	S.No. 684-3 Village site.	Acres 0-03	Rs 0-6-0 groundrent.
2. (a) Book value of the Chavadi building	Rs 1180/-		
(b) Market value.	Rs 500 with a old chavdi building.		
3. Alienee and purpose of alienation.	President District Board, Bellary. For locating the Rural Dispensary.		
4. Remarks.	There are no trees on the land to be alianated. The old chavadi may be alienated to the District Board, Bellary for locating the Rural dispensary.		

31-10-37.

A.S.N./30-10P.

For Collector.

30-10-37

Copy of Proceedingsof the District Board, Bellary dated 30-1-1937.

Medical Relief- Accommodation.

Letter C.No. 5861/36 dated 17-12-36 of the Collector of Bellary, requesting to send a resolution contending to keep the old chavadi at Kottur in proper repair in case it is transferred to the District Board for locating the rural dispensary.

Resolution No. 23:-

The Board agrees to take it over and keep the chavadi in proper repairs.

Copy of proceedings of the District Board, Bellary dated 30-7-1937

Buildings- Alienation.

Letter C.No. 1276/37 B dated 16-7-37 of theTahsildar of Kudligi requesting to send a resolution of the Board abiding the several conditions under B.S.O. 24 para 10 in case of the old chavadi at Kottur is transferred to theDistrict Board for locating the rural dispensary.

2. District Board Resolution No. 23 dated ~~30-1-1937~~ 30.1.37 on the subject.

Resolution No. 32:.

The Board applies to the Collector for the alienation of the building for the location of Rural dispensary and agrees to abide by the following conditions laid down in B.S.O. No. 24. The Board also agrees to keep the chavadi in proper repairs.

1. The building shall be used and for no other purpose.
2. The Government may resume the land wholly or in part with any buildings thereon, in the event of the infringement of any of the conditions of the grant. In the event of such resumption, no compensation shall be payable for any improvements that may have been effected, or other works that may have been executed on the land by the grantee(and the

grantee shall not be entitled to the payment of any amount that may have been paid to the Government for the grant). If there are buildings on the land the Government may direct the grantee to remove them.

3. The Government may resume the land wholly or in part, with any buildings thereon, if in the opinion of the Government the land is required for a public purpose or for conducting mining operations. (In the event of such resumption or in the event of the acquisition of the land forany reason the compensation payable for the land and trees shall in nocase exceed the amount paid for them by the grantee or their value at the time of resumption or acquisition whichever may be less).

4. In the event of resumption under condition 3. if there are buildings on the land, the Government may, at their option, either

a) purchase the buildings, or

b) direct the grantee to remove the buildings.

5. In the event of the resumption of the land followed by the purchase of the buildings under condition 4 or in the event of the acquisition of the land for any person the compensation payable for buildings or other improvements shall in no case exceed(the amount paid for them by the grantee at the time of alienation or their value at the time of resumption or acquisition whichever may be less, together with) the initial cost or the value at the time of resumption whichever may be less of any buildings erected or other improvements effected on the land by the grantee in accordance with terms of the grant.

6. In the event of the grantee refusing to remove the buildings, when so directed under conditions 2 or 4, the Government may remove them and realise the cost of the removal by the sale of the materials.

7. In the event of the voluntary relinquishment of the land by the grantee, no compensation shall be payable for any improvements that may have been effected or ~~for~~ works that may have been executed on the land by the grantee(and the grantee shall) not be entitled to the repayment of any amount that may have been

...of proceedings of the District Board Bellary dated 17-9-37.

Read:- Letter from the Collector of Bellary No. 5861/36 A-1 dated 13-9-37 calling for a resolution of the Board alterations to the existing building or erection of new buildings on the site of the old chavadi at Kottur permitted to be occupied by the Board Rural Dispensary Kottur.

Resolution No. 12 A:-

Board accepts the conditions that no alterations other than those necessary to keep the building in good condition shall be made to the existing building nor shall any new building be erected on the site without the previous permission of the Collector.

(True Copy)

21-10-37.

For Collector.

(Full Board)

Alienation - Land - Revenue and - Buildings -
(Bellary.) - Kundligi Taluk
Kotturu village - S.No. 684-3 - Sanctioned
District Board, Bellary - Rural dispensary

Re ~~sanctioned~~

Sanctioned.

B 1796/37 ——— Q pl.q.
B 5872/37 ——— Q pl3cf.

Rev. (Mis). 3912 ----- dt

The Board ~~sanctions~~ the alienation of the plot of land comprised in S.No. 684-3 of Kotturu village Kundligi taluk measuring 0.03 cents. in favour of the District Board, Bellary. for use as the site of a rural dispensary

2/. The alienation will be free of charge for the occupancy right and free of assessment ~~but subject to assessment which will be liable to revision at every resettlement and subject to the payment of Re. being the value of the trees standing on the land and~~ but subject also to the following conditions to which the alienee has agreed :-

(1) The land and the buildings thereon shall be used as the site of a nursery and for no other purpose.

(ii) No other building shall be constructed on the land without the previous permission of the Collector of the district.

(ii). The grantee shall maintain the building in good condition. Such repairs as the Coll. of Dt may consider necessary from time to time shall be executed by the grantee within such time as the Coll. may fix and to his satisfaction. In the event of default, the repairs shall be carried out by the Coll. and the cost thereof recovered from the grantee.

(iii) No alterations other than those necessary to keep the building in good condition shall be made to the existing building, nor shall any new building be erected on the site without the previous permission of the Collector.

(iv). The Government may resume the land wholly or in part with any buildings thereon, in the event of the infringement of any of the conditions of the grant. In the event of such resumption no compensation shall be payable for any improvements that may have been effected or other works that may have been executed on the land by the grantee (~~and the grantee shall not be entitled to the repayment of any amount that may have been paid to the Government for the grant~~). If there are buildings on the land, the Government may direct the grantee to remove them.

The Government may resume the land wholly or in part with any buildings thereon if in the opinion of the Government the land is required for a public purpose, or for conducting mining operations. In the event of such resumption or in the event of the acquisition of the land for any reasons, the compensation payable for the land and trees shall in no case exceed the amount paid for them by the grantee or their value at the time of resumption or acquisition whichever may be less).

about this portion of the properties. He is of opinion that an appeal may be filed against the findings on issues II and III. The Government Pleader, Mangalore, whom I have consulte is also of the same opinion. I enclose a copy of his letter Ref.No.645/1937 dated 7.12.37 together with a copy of the draf appeal Memo. prepared by him and recommend that the Board may be pleased to sanction the filing of an appeal and to approve the draft appeal memo.

3. The judgment and the decree were in this case passed on 25.10.37. Copies were applied for on the same day (25.10.37), but they were ready only on 30.11.37 on which day they were -- delivered to the Pleader for Government, Puttur. They were received by me on 2.12.37. The Government Pleader, Mangalore, states that the appeal time will expire on 30.12.37 and that as that day falls within the Christmas holidays, the appeal can be filed on 3.1.1938 (the date of reopening of the Court). I request the favour of early orders. The records detailed in the margin are enclosed.

1. Copy of judgment. ✓ pp17-21 Cj
2. " decree. pp23-26 Cj
3. Certified copies of depositions of witnesses. (A)
4. One file containing copies of exhibits etc. (A)

for Collector. 11.12.37

11.12.37

Summary and Notes.

HP 13-1964 (M) This suit was filed by Government claiming A and B Schedule properties, with mesne profits by right of ~~extreat~~ escheat, there being no heirs or reversioners to the last male owner Narain Makkithaya after the death of his mother (Laxmi) and his widow (Thachamma). Narain Makkithaya died in or about 1875 and 1876. The widow Thachamma died on or about 4.1.1934.

2. During escheat enquiry defendants 4 and 5 came forward as claimants but they were unable to prove their relationship to the deceased and hence their claim was not recognised by Government. In the suit they remained exparte. 6th defendant seems to have purchased the property from defendants 4 and 5 even during the life time of the widow Thachamma. He too remained exparte. in the suit. Defendants 2 and 3 are the tenants of the property. 1st defendant alone contests the claim of the Government. His contention is two-fold. (1) He denies the right of the Government to escheat. (2) He purchased the property in Court sale held in execution of a decree obtained by him for arrears of interest due on a mortgage executed by the widow Thachamma, and obtained delivery of the property through Court. He contends that both the mortgage and Court sale are binding on Government.

1964 3. The 1st Issue is - Whether the plaintiff is entitled to the plaint properties by right of escheat. The Court believed the evidence of P.Ws.1 to 3 that after the death of the widow Thachamma there are no heirs or reversioners to the property and disbelieved the evidence of D.W.1 examined on behalf of 1st defendant, who stated that defendants 4 and 5 are the reversioners entitled to the property. Compared with what he has stated before the Tahsildar (Ex.B) his evidence was full of contradictions and inconsistencies and was therefore rejected by the Court. The 1st defendant in his statement did not set up defendants 4 and 5 as reversioners nor did he suggest therein that there are any heirs or reversioners existing. The Court

decided that there are no heirs to the properties and Government are entitled by right of escheat and found this Issue in favour of Government. para 6, p18 cj

p17 cj 4. Issues II and III are the most important. They relate to the validity of the mortgage executed by the widow Thachamma and the decree obtained for arrears of interest due on the mortgage and the Court sale held in pursuance of the decree. In the case of a mortgage or alienation by a widow, it has always been held that the burden of proof lies upon the mortgagee or alienee to prove consideration, legal necessity and binding nature of the mortgage or alienation and where a decree is obtained against a widow it must be shown by the party relying on the decree that the widow was sued in a representative capacity, representing the estate in which case alone the decree would bind the estate and the reversioners. This principle applies also, in my opinion where Government Claim the property by right of escheat. But the Court while framing the issues, has thrown the burden on Government. I raised objections which were overruled. The matter was referred to the opinion of the Government Pleader, Mangalore and on his suggestion a petition was filed for amendment of issues so as to cast the burden on 1st defendant. The amendment petition was disallowed by the Court. As the issues stand the Government who are not parties to the mortgage have to prove the negative that there was no consideration or legal necessity for the mortgage and it was not valid and binding. So also in regard to the decree and Court sale. The fact that the burden of proof was wrongly thrown upon Government may be taken in my opinion, as a ground in appeal. The mortgage Ex. VII was executed by the widow for Rs.1000/- in favour of One Srinivas Balkuraya. It was executed on 2.4.1910. The 1st defendant produced documents Ex. I to IV to prove validity of consideration and legal necessity for the mortgage Ex. VII. The validity of

of all these documents is impeached by Government. On examining all these documents, it will be found that there was no legal necessity to borrow and the consideration is not such as to bind the estate. All these documents seem to have been got up to create evidence of debt and to knock out the property ultimately by allowing the debt to swell.

No witnesses were examined by 1st defendant to prove these documents or the consideration recited therein, mere recitals as to necessity and consideration are no proof especially against those who are no parties to the transaction.

All these documents may be carefully examined and the consideration analysed. The mortgage Ex. VII is the document relied on by 1st defendant. It was executed for Rs.1000/- and in renewal of the earlier mortgage Ex. VI Rs.1000/- represents the principal of Ex. VI viz., Rs.650+Rs.347.12.0 being arrears of interest for 6 years+Rs.2.4.0 received for expenses of document. The mortgage Ex. VI refers to a still earlier mortgage Ex. V dated 1880. The consideration of Ex. VI viz., Rs.650/- is made up as follows:-

Rs.650. 0. 0	Rs.268.12.0 being the principal and interest due on the earlier mortgage Ex. V.
	Rs.120.0.0 for payment to the widow's brother Venkatramanya from whom the amount was borrowed for obsequies and annual ceremonies of the mother-in-law Laxmi.
	Rs.261.4.0 for expenses of pilgrimage.
	Rs.650.0.0

expenses of document.

Ex. III, III (a) and IV are relied upon to show that the deceased Narain Makkithaya had left debts to the extent of Rs.230/-. These documents Ex. III, III (a) and IV have not been proved at all. They have been admitted and marked merely on the ground that they are more than 30 years old. But there are many suspicious circumstances about these documents. Ex. III purports to have been executed by the deceased Makkithaya for a sum of Rs.100/-. The genuine signature of the deceased was not produced for comparison with the signature in Ex. III. The stamp paper for Ex. III was purchased in August 1875 and the document was written in November 1875. The Stamp paper was sold to one Soira Baliga who is unconnected with the parties belonging to a different caste and residing in a different village. It is clear that some old stamp paper purchased by somebody was availed of to get up this document. Whatever it be, this debt was discharged on 18.4.1876 and was not outstanding at the date of the mortgage Ex. V. The next document is Ex. IV. It is a receipt for payment of debt alleged to have been contracted by the deceased. The debt consists of 2 items (1) Rs.100/- borrowed by the deceased for expenses of his marriage. (2) Rs.30/- borrowed on pledge of jewels as per Kaikagada executed by the deceased. This receipt bears no stamp. The absence of stamp is significant, and shows that it was got up later and no stamp was affixed as stamp current in 1876 was not available when the document was got up. The Kaikagada referred to for pledge of jewels is not forthcoming and was not produced. As regards Rs.100/- borrowed if this loan is earlier than Ex. III it would have been consolidated with the loan of Ex. III and the document would have been taken for the aggregate amount of Rs.200/-. If the loan was later there it is inexplainable why a document was not taken when one is taken for the earlier loan. All these circumstances throw considerable doubt upon the genuiness of the documents which ought not have

been accepted as genuine merely on production.

There is no reference to Ex. III and III (a) and IV in any of the subsequent registered mortgage documents executed by the widow, so as to place their genuineness or their earlier existence beyond doubt. The mortgage Ex. IV was executed by the two widows not for discharging the debts of the deceased husband as these debts even if true were discharged in 1876 but for the personal decree debts of the 2 widows viz., O.S. 57/1879 and the decree debt of Rs.60/- due to Nandavar K. Venkatramana. There is no mention of the number of this latter decree and there is no receipts for payments to Venkatraman by the mortgagee. Ex. V thus executed for the personal debts of the widows is not valid and binding against the estate. If Ex. V is not valid it follows Ex. VI which was executed partly for the amount of Ex. V and partly for the additional consideration of Rs.380/- was also not valid. The additional consideration of Rs.380/- is made up of 2 items (1) Rs.120/- for discharging the debt of the widow's brother Venkatraman incurred for obsequies and annual ceremonies of the widow's mother-in-law Laxmi. (2) Rs.260/- and odd for expenses of pilgrimage. None of these items can be true and accepted. There is no document to evidence the debt of the widow's brother. The mother-in-law died according to P.W.1 and P.W.2 whose evidence in other respects was believed in about 5 or 6 years after the death of Narain Makkithaya who died in 1875 or 1876 i.e., she died in about 1881 or 1882. Hence if any debt was incurred for obsequies, it will be barred and not subsisting at the time of Ex. VI. Even D.W.1 says in Ex. B that mother-in-law Laxmi died 2 years after her son. Hence this item of Rs.120/- seems to have been recited simply to benefit the widow's brother. As regards pilgrimage the evidence of P.W.1 to 3 is that widow never went on pilgrimage to any place. These witnesses being neighbours are in a position to know about it as in those days pilgrimages were rare and if made would be widely known. P.W.1

is positive that the widow never went on pilgrimage and his evidence is not a matter of inference as observed by the Court. D.W.1 swears that he accompanied the widow on pilgrimage. He was disbelieved in other respects. The recital in Ex. V is pilgrimage to Tirupathi and Rameshwaram. His evidence is that the widow went to Gaya and Benares etc., According to Hindu Law expenses of pilgrimage to Gaya and Benares alone are valid and legal necessity. Hence these places were added in the evidence of D.W.1. D.W.1's evidence is that she spent about Rs.360/- for Tirupathi and Rameshwaram trip and got an additional amount by money orde: from her village and spent Rs.60/- at Gaya and Benares and there was correspondence by the widow's brother written from these places and he also maintained accounts of expenses of pilgrimage. The Money Order receipt, postal correspondence and accounts would have been best evidence. Those are not forthcoming and not produced. Hence this item of expenditure cannot be accepted and even accepted the sum of Rs.60/- spent at Gaya will alone bind the estate.

Ex. VI is therefore not valid and supported by legal necessity or consideration that will bind the estate. If this is so Ex. VII executed in renewal of Ex. V must fail and cannot be binding. These mortgages in favour of the mortgagee seem to be nominal documents. Though some interest is recited to have been paid, no receipts are produced. There was no attempt to recover the principal but the debt is renewed from time to time and ultimately the mortgage was got assigned to 1st defendant who is the widow's sisters son-in-law (Vide evidence of D.W.1).

There is also a legal aspect about the validity of Ex. VII. It was executed more than 12 years after the amount of Ex. VI became payable. Ex. VI became payable on 30th Phalguna of Hevilambi year corresponding to 22.3.1898. Ex. VII was executed on 2.4.1910 i.e., after Ex. VI became

barred. The widow had no right to execute the document after the debt was barred so as to bind the estate. Section 31 of the Limitation Act is relied upon but that Section gives 2 years' time to file suits and does not extend the period of limitation. The ruling in 45 Law Weekly 72 may be perused. In my opinion Section 31 cannot be availed of.

Lastly the mortgage decree O.S.156/1927 was not obtained against the widow in her representative capacity and therefore cannot bind the estate. The suit extract Ex. II shows that the widow was sued in her personal capacity. The production of the decree is not necessary and even if necessary the 1st defendant has to produce it to show that he got a valid decree against the widow in her representative capacity. The Court sale in ------ respect of such decree is not valid beyond the life time of the widow (See 25 Law Weekly Page 709). In my opinion an appeal may be filed against the findings on Issues II and III.

The other Issues have been decided in favour of Government.

Sd/- B. A. Baliga,
Pleader,
1.12.1937.

For Collector.

Letter from the Government Pleader, Mangalore.
To the Collector of South Kanara.
Ref.No. A. 645-37 dated 7-12-1937.

Suits - Puttur District Munsif's Court - O.S.288/36 - Escheat of the property of Narayana Makkithayya - filing an appeal.

Ref.A3.No. 893-34/3106-36 dated 3-12-1937.

I have gone through the Judgment and the evidence in the above suit. I think that the Dt. Munsif has not properly appreciated the evidence bearing on the various items of consideration. He has also erred in law by wrongly casting the burden on Issues II and III on the Government. There is no evidence worth the name on behalf of the defendants, apart from the recitals in the various documents as to the payment or the necessity of the consideration and even those recitals are not sufficient to support the findings in defendant's favour. I think an appeal can be filed with fair chance of success.

I have drafted the ground of appeal and am enclosing the same herewith. The appeal time expires on 30-12-37 and as the said date falls within the Christmas holidays, the appeal can be filed on the date of the reopening viz. 3-1-1938.

The papers sent to me are herewith returned.

(True copy)

For Collector.
11.12.37

11.12.37

In the Court of the District Judge of South Kanara.

Appeal suit No. /1937.

Between:

The Province of Madras represented by the Collector of South Kanara.) Appellant.

and

Narayana Mardithaya Respondent.

Grounds of Appeal.

1. The decree of the Lower Court in so far as it is appealed against is contrary to law the weight of evidence and the probabilities

2. While rightly holding that there were no heirs entitled to the properties of the deceased Narayana Makkithayya at the time of the death of his widow Tachamma alias Saraswati, and that the plaintiff is entitled to take possession of the B schedule properties on account of Escheat the Lower Court erred in dismissing the plaintiff's suit so far as the A schedule properties are concerned.

3. The Lower Court ought to have held that the mortgage Ex. VII executed by the last male holder, the decree in O.S. 156/1927 obtained on the strength of the said mortgage and the subsequent execution proceedings are not valid and binding on the plaintiff.

4. The Lower Court ought to have held that the burden of proving the validity and the binding nature of the mortgage Ex. VII on the estate of the last male holder is upon the alinee and that the 1st defendant has not discharged the said onus.

5. The Lower Court erred in not framing proper issues in the case and in wrongly casting the burden of issues II and III on the plaintiff.

6. The Lower Court ought to have held that no item of the consideration for Ex. VII was incurred for necessities binding on the estate of the last male holder.

7. The Lower Court ought to have held that Ex. V the

earliest mortgage was executed by the mother and widow of Narayana Makkithayya for the discharge of their personal debts, and that there was absolutely no evidence that the said debts was incurred for any purposes binding on the estate.

8. The Lower Court erred in holding that Exs. III and IV are genuine in the absence of any proof.

9. The Lower Court ought to have held that Exs. II, III and IV are absolutely irrelevent and have no bearing on the case.

10. In the absence of clear evidence to connect Exs. III and IV either with Ex. II or with Ex. V the Lower Court erred in holding that Ex. V is binding on the estate of the last male holder.

11. The Lower Court failed to see that Ex. II was a decree obtained against the widow and mother of Narayana Makkithaya personally.

12. The Lower Court ought to have held that the 1st defendant has failed to prove that the debt due to Nandaver K. Venkatramana was for valid necessities binding on the estate.

13. In the absence of satisfactory evidence and even recitals in Ex. V to the effect that money was borrowed to discharge debts binding on the estate the Lower Court ought to have held that the mortgage Ex. V was not binding on the estate.

Laxmi died about five or six years after the death of Narayana Makkithayya and that there was no connection between Ex. VI and her funeral ceremonies.

17. On the evidence the Lower Court ought to have held that there was no satisfactory evidence of any pil\grimage to any place. The Lower Court erred in placing any reliance on the evidence of D.W.1 on this point having already held that he is unworthy of belief and especially as it was not supported by any correspondence or accounts in support thereof.

18. Even otherwise the Lower Court ought to have held that the only pil\grimage referred to in Ex. VI was to Tirupathy and Rameshwaram, the expenses for which are clearly not binding on the estate. The Lower Court failed to see that the alleged pil\grimage to Benares and Gaya was a later invention -------- introduced in the case in the course of the evidence of D.W.1 and as such ought to have disbelieved the same.

19. In any case the Lower Court failed to see that according to the evidence not more than Rs. 60/- was spent for the pil\grimage to Benares and Gaya.

20. The Lower Court erred in discarding the evidence of P.W.1 on this point.

21. As such the Lower Court ought to have held that Ex. VI which is only the renewal of the amounts due under Ex. VI is not valid and binding on the estate and as against the plaintiff.

22. The Lower Court ought to have further held that Ex. VI was void, having been executed in renewal of a debt barred by limitation and as such beyond the competence of the widow. The view of the Lower Court on this point is erroneous.

23. In any event ~~of~~ the Lower Court ought to have held that the decree in O.S. 156/1927 as could be gathered from Ex. II was only a decree against the widow personally and was not binding against the estate of the plaintiff and that as such the 1st defendant is not entitled to possession of the A schedule properties beyond the life of the widow.

duty of the 1st defendant to have produced the decree and to have shown that it is binding on the reversion. On account of his failure to do so the Lower Court ought to have drawn an adverse inference against him.

25. The Lower Court ought to have decreed the suit for possession of the A schedule properties as prayed as the decree and the sale certificate Ex. IX showed that what was purchased by the 1st defendant was the life interest of the widow Tachamma.

26. The Lower Court failed to see that all these transactions were brought about for the purpose of securing the estate to a near relation of the widow, the 1st defendant being no other than her sister's son-in-law.

27. The Lower Court did not properly appreciate the evidence, both oral and documentary, adduced in the case.

Prays therefore that in modification of the decree of the Lower Court, plaintiff's suit so far as regards the A schedule properties may be decreed with costs throughout

[illegible]
[illegible]r Collector.

In the Court of the District Munsif of Puttur, South Kanara.

Present:—M. R. Ry. B. L. N. Rai Avergal, B. A., M. L.

Monday, the 25th day of October 1937.

ORIGINAL SUIT NO. 288 OF 1936.

Between :—

The Secretary of State for India in Council . . . . . *Plaintiff*

and

1. Narayana Maradithaya . . . . . .
2. Manjappa Shetti . . . . . .
3. Narayana Mayya . . . . . .
4. Padmanabha Bhat. . . . . .
5. Subraya Bhat . . . . . .
6. Pakeera Beary . . . . . *Defendants.*

This suit coming on for final hearing on the 7th and 25th days of August, 10th, 23rd and 29th days of September and on the 12th and 19th days of October 1937, in the presence of Mr. B. Achutha Baliga, pleader for the Plaintiff and of Messrs. C. Shama Shastri and N. Venkatramana Kolathaya, Pleaders for the 1st Defendant, and the other Defendants being absent and declared *ex parte*, and having stood over for consideration till this day, the Court delivered the following

Judgment:—Suit by the Government claiming possession of plaint properties on the ground of escheat.

2. The plaint allegations are to the following effect :—One Narayana Makkithaya died in or about 1875 or 1876 leaving a young widow Thachamma *alias* Saraswathi Amma and a mother Laxmi Amma and the plaint properties. The mother died a few years later. The widow died in January 1934 leaving no other heir to the last male holder. Defendants 4 and 5 are not heirs and their vendee 6th Defendant has no right. 1st Defendant is in possession through his tenants, Defendants 2 and 3, by reason of the decree in O. S. 156 of 1927 of this Court and the subsequent execution proceedings. The mortgages which finally ended in the decree in O. S. 156 of 1927 are not valid and binding on the Plaintiff and were intended to defraud the Plaintiff. 1st Defendant is not entitled to the B schedule property. Hence this suit for possession with mesne profits, past and future.

3. 1st Defendant alleges that the income was hardly sufficient for the maintenance of the widows, that he obtained transfer of the mortgage of 2—4—1910 for lawful and proper consideration, that the Plaintiff cannot question the mortgages, decree and the execution proceedings, that the Plaintiff has no right to the B schedule properties, that the Plaintiff is not entitled to mesne profits or interest, and that the Plaintiff is liable to pay him the amount due under the mortgage of 2—4—1910 and costs of O. S. 156 of 1927 and Rs. 200 for improvements.

4. Defendants 2 to 6 are *ex parte*. 4th Defendant also died pending suit.

5. The following issues were framed by my predecessor :—

I. Whether the plaintiff is entitled to the plaint properties by right of escheat?

II. Whether the mortgage deed dated 2—4—1910 is not true, supported by consideration, valid and binding on Plaintiff?

III. Whether the decree in O. S. 156 of 1927 on the file of this Court and the sale in execution of that decree in R. E. P. 286 of 1928 are not valid and binding on Plaintiff?

IV. Whether in case sale is set aside, 1st Defendant is entitled to claim th amount of the decree in O. S. 156 of 1927 and of the mortgag deed dated 2—4—1910?

V. Whether 1st Defendant has any right to B schedule properties?

VI. Whether Plaintiff is entitled to claim B schedule properties?

VII. Whether 1st Defendant has made any improvements? If so, to what amount is he entitled?

VIII. Whether Plaintiff is entitled to mesne profits, if so, at what rate?

IX. Whether Plaintiff is entitled to interest on mesne profits?

X. To what relief is Plaintiff entitled?

6. *Issue I.* The plaint A schedule properties belonged to one Narayana Makkithaya, son of Ranga Makkithaya. He died in 1875—1876 leaving an aged mother Laxmi Amma and a young and minor widow Thachamma *alias* Saraswathi Amma. The mother died in 1892—1893. The widow died in January 1934. The Government now claims the properties by right of escheat. It is said that Defendants 4 and 5 are the reversioners and that they sold the properties to 6th Defendant. But all these parties (Defendants 4 to 6) are *ex parte*. There is absolutely no evidence that Defendants 4 and 5 are the reversioners or in any way related to the last male holder. D. W. 1 is the only person who is examined to speak to this relationship. He was examined once before by the Tahsildar. Exhibit B is his evidence before the Tahsildar. The evidence given then and that given now cannot be reconciled. It is full of contradictions and inconsistencies. I cannot attach any weight to the evidence of D. W. 1. On the other hand, P. Ws. 1 to 3 prove that the last male holder left no heirs at all and that Defendants 4 and 5 are not related to him. In 1934 there was the Gazette Notification (Exhibits I and Ia) about the escheat and no one claimant came forward. Defendants 4 and 5 did not come forward with any claim. Even in this suit they have not put forward any claim. 1st Defendant also in his written statement does not say that they are the reversioners. Under these circumstances, it is clear to me that with the death of the widow in January 1934 the family became extinct and the Government became entitled to the properties. I would accordingly find that the Plaintiff is entitled to the plaint properties by right of escheat.

7. *Issues II and III.* 1st Defendant is in possession of the properties by reason of the delivery to him through Court in pursuance of the Court sale in his favour in execution of the decree in O. S. 156 of 1927 of this Court obtained by him for arrears of interest due to him under a mortgage deed dated 2—4—1910 executed by the widow Thachamma to one Srinivasa Balkuraya who assigned it to 1st Defendant on 3—4—1924. The Plaintiff's case is that these transactions are not binding on the Plaintiff as they were done without any legal necessity and for the purpose of defrauding the Plaintiff. Exhibit VII dated 2—4—1910 is the mortgage for Rs. 1,000 executed by Thachamma to Srinivasa Balkuraya. Exhibit VIII dated 3—4—1924 is the transfer of Exhibit VII in favour of 1st Defendant. 1st Defendant filed O. S. 156 of 1927 for arrears of 3 years' interest. The present Government pleader appeared for the Plaintiff. It was decreed on 17—3—1927. On 23—7—1928 in execution, the property was purchased in Court auction by 1st Defendant for Rs. 1,350. Exhibit II is the extract from the Suit Register relating to O. S. 156 of 1927. Exhibit IX is the sale certificate issued to 1st Defendant. On 17—11—1928 1st Defendant obtained delivery through Court as per Exhibit X in R. E. P. 655 of 1928. The question for determination is whether the mortgage of 2—4—1910 (Exhibit VII) is binding on the Plaintiff. It is for Rs. 1,000. The Rs. 1,000 is made up of Rs. 650, the principal under a mortgage of 5—4—1893,

Rs. 347—12—0 6 years' interest under that mortgage and Rs. 2—4—0 paid that day for expenses of registration. Thus Exhibit VII is only a renewal of Exhibit VI dated 5—4—1893. Exhibit VI is a mortgage for Rs. 650 executed by Thachamma in favour of Srinivasa Balkuraya. About a year before its execution the mother Laxmi Amma had died. Thachamma had to spend on the obsequies of and anniversary of her mother-in-law also. The consideration of Rs. 650 for Exhibit VI is made up of (1) Rs. 268—12—0 due to the mortgagee under a mortgage of 25—10—1880 executed by both the widows, and (2) Rs. 381—4—0 taken in cash. Thachamma had borrowed Rs. 120 from her brother Venkatramana for the expenses of the obsequies and Varshanthika of Laxmi Amma. Now that the mother-in-law was also dead, Thachamma wanted to go on a pilgrimage to Tirupathi and Rameshwar for the "ಪಾಪಕ್ಷಯ ಪುಣ್ಯ" of her husband. For payment of debt due to the brother incurred for the ceremonies of her mother-in-law and for expenses of the pilgrimage, she took Rs. 381—4—0 in cash before the Sub-Registrar. The income of the properties cannot be more than 30 muras of rice and Rs. 16. In 1893, therefore, it was not beyond Rs. 75 to Rs. 100. This was barely sufficient for the maintenance of the two widows, for payment of interest of husband's debt and for the expenses of the extra ceremonial functions. As after her there was no reversioner or heir to the property, the widow cannot be blamed if she thought of spending a bit beyond her means on a pilgrimage to Kasi, Prayaga, Tirupathi and Rameshwara for the spiritual benefit of her husband. Her brother and D. W. 1 accompanied her to those places. The brother is now dead. P. W. 3 is the Magne Shanbhogue of the village since 1907. Though he came to that village only after 1907 he has the audacity to swear that the widow never went on a pilgrimage. The pilgrimage was in 1893, that is, 14 years prior to P. W. 3's connection with that village. The evidence of P. W. 1 comes to this that without his knowledge she could not have gone on pilgrimage. This sort of inference and surmise is no evidence. Exhibit VI is attested by her own brother Venkatramanaya. He was also the identifying witness before the Sub-Registrar. He accompanied her to the sacred places also. Thus out of the Rs. 650 of Exhibit VI, Rs. 268—12—0 went towards a prior debt, Rs. 120 for the expenses of the obsequies and Varshanthika of the mother-in-law and Rs. 261—4—0 for the pilgrimage to Benares, Gaya, Tirupathi and Rameshwaram for spiritual benefit of the soul of the deceased husband. If the fact be considered that at that time the widow alone was entitled to the enjoyment of the property, that she had not much interest left in wordly affairs and that after her there was no other reversioner to succeed to the effects of her husband, these items of expenditure cannot be considered to be unreasonable or extravagant or fraudulent. As stated above, one of the items of consideration for Exhibit VI is the mortgage dated 25—10—1880 for Rs. 250 executed by both the widows Laxmi and Thachamma in favour of Srinivasa Balkuraya. Exhibit V is that document. One of the attestors to Exhibit V is Thachamma's maternal uncle Vishnu Bhat. He was the person who purchased and brought the stamp paper on behalf of the widows. As regards the consideration of Rs. 250 of Exhibit V, Rs. 190 went towards the satisfaction of decree in O. S. 57 of 1879. The decree-holder had taken out execution in R. E. P. 270 of 1880 against the widows. The decree-holder was the mortgagee under Exhibit V. The sale was averted by execution of Exhibit V. Nandavara Kavalige Venkatramana had also a decree. The widows owed him under that decree. To pay him and for expenses of registration of Exhibit V the widows received Rs. 60 before the Sub-Registrar from the mortgagee under Exhibit V. As regards the decree in O. S. 57 of 1879, Exhibit is certified copy of the extract from Suit Register. It was a suit on an instalment bond for Rs. 138—5—4 against both the widows. Further details about that suit

1st Defendant could not get it as is clear from Exhibit XI, the endorsement of the District Court. It is clear from Exhibits II, V, VI and VII that the widow was somehow managing to pay the interest almost regularly without much arrears. Even in her husband's time the income of the properties was hardly sufficient to meet any unexpected and extra item of expenditure. He had borrowed on 12—11—1875 under Exhibit III Rs. 100. His father-in-law discharged it on 18—4—1876 as per Exhibit III *a*. Exhibit IV is another receipt. It shows that he had to borrow Rs. 100 for the expenses of his marriage. Exhibit IV also shows that he had even to pledge jewels for Rs. 30. Thus he died leaving debts to the extent of Rs. 230 as is evident from Exhibits III and IV. 1st Defendant is placed, under a particular disadvantage and a very difficult position. These transactions took place so long ago that the principal parties are all dead and not available now. They are very difficult of proof by extraneous evidence. The documents discussed above clearly prove that there was necessity for the mortgage and that the mortgage is supported by consideration I fail to see why there should be a fraud for nearly 60 years. It is said that at least the alienation cannot last beyond the lifetime of the widow as the decree is against the widows and not against the properties. No such inference, however, can be drawn as the decrees are not before Court. It is also said that as the due date for Exhibit VI was 22—3—1898, it became barred before the date of Exhibit VII (2—4—1910). But under the then prevailing law it was not barred. Under these circumstances, I would find that the mortgage deed dated 2—4—1910 is true, supported by consideration, valid and binding on Plaintiff, and that the decree in O. S. 156 of 1927 and the subsequent execution proceedings are valid and binding on Plaintiff.

8. *Issue IV.* In the light of the findings on issues II and III, this issue does not arise.

9. *Issues V and VI.* Exhibit IX is the sale certificate in favour of 1st defendant. From Exhibit IX it is clear that the 1st Defendant is entitled only to the A schedule properties. 1st Defendant is not entitled to the B schedule properties. After the widow the B schedule properties belong to the Plaintiff. I would accordingly find that the 1st Defendant has no right to the B schedule properties and that the Plaintif is entitled to claim them.

10. *Issue VII.* There is no evidence adduced on this issue. I would find that 1st Defendant has not made any improvements and that he is not entitled to claim any compensation.

11. *Issues VIII and IX.* As regards the A schedule properties, the Plaintiff is not entitled to mesne profits. As regards the B schedule properties 1st Defendant did not get possession of same under Exhibit X. There is no evidence that 1st Defendant is in enjoyment of the B schedule properties. I would accordingly find that the Plaintiff is not entitled to mesne profits and interest on mesne profits.

12. *Issue X.* The Plaintiff will be entitled to a decree against Defendants for possession of the plaint B schedule properties. The Plaintiff's suit for possession of the A schedule properties is dismissed. Under the circumstances that each party has succeeded in part, the parties do bear their own costs of the suit.

Pronounced in open Court, this 25th day of October 1937.

(Signed) B. L. N. Rai,
District Munsif.

Plaintiff's Exhibits.

A.	20—11—1934.	Gazette Notification (English) in South Kanara District Gazette in respect of Escheat Proceedings.
A1.	Do.	Do. (Kanarese) do.
B.	21— 7—1934.	Statement of Venkatramana Ballakkuraya recorded by the Tahsildar of Puttur.

Defendants' Exhibits.

I.	3—10—1879.	Certified extract from the Suit Register relating to O. S. 57 of 1879 of this Court.
II.	21— 2—1927.	Do. do. relating to O. S. 156 of 1927 of this Court.
III.	12—11—1875.	Personal deed executed by Narayana Makkithaya to Kusappaya Kamthi.
III*a*.	18— 4—1876.	Receipt on the back of Exhibit III passed by Kusappaya to Vishnu *alias* Dasappaya.
IV.	Do.	Receipt passed by do. to do.
V.	25—10—1880.	Registered mortgage deed executed by Laxmi Amma and another to Srinivasa Balkuraya.
VI.	5— 4—1893.	Do. by Tachamma *alias* Saraswathi to do.
VII.	2— 4—1910.	Do. do. do.
VIII.	3— 4—1924.	Registered assignment deed executed by Padmanabha Balkuraya to Narayana Maradithaya.
IX.	25— 8—1928.	Sale certificate issued to Narayana Maradithaya in R. E. P. 286 of 1928 on the file of this Court.
X.	17—11—1928.	Certified copy of the delivery receipt passed by Narayana Maradithaya in R. E. A. 655 of 1928 of this Court.
XI.	7— 8—1936.	Copy application No. 1536 filed on behalf of Narayana Maradithaya with orders thereon.

Plaintiff's Witnesses.

1. Rama Bhat. 2. Tyampa Rai. 3. T. Ramappa.

Defendants' Witness.

Venkatramana Ballakkuraya.

(Signed) B. L. N. Rai,
District Munsif.

Exd. Y. V. Rao.

	Rs.	As.	P.
ng charges including money order and Postage charges	4	5	0

(True copy)

Examiner.

Application No. 1861 made on 25—10—1937 by Plaintiff's Pleader Mr. B. Achyuta Baliga.
Printing charges called for on 29—10—1937
Do. deposited on 4—11—1937
Copy ready on 26—11—1937
Do. delivered on 26—11—1937

In the Court of the District Munsif of Puttur (S.Kanara

Monday, the 25th day of October 1937.

Present: M.R.Ry. B.L.N.Rai Avl.,B.A.,M.L.,

Original Suit No.288 of 1936.

The Secretary of State for India in Council represented by the Collector of South Kanara. — Plaintiff.

against

Narayana Maradithaya, son of Krishna Maradithaya, Panjipadavin Bettampadi village, Puttur Taluk.

Manjappa Shetti, nephew of Sanku Shetti.

Narayana Mayya son of Panjaje Narsappaya Mayya, Nos. 2 and 3 reside at Manchi.

Padmanabha Bhat, son of Subraya Bhat

5. Subraya Bhat, son of 4th defendant.

Nos. 4 and 5 reside at Kattathila Meginamane of Kolnad village.

6. Pakeera Beari, son of Sooribail Moidine Beari, Bolanthur village, Puttur Taluk. — Defendants.

The plaintiff claiming the suit properties by escheat consequent on the death of one Thachamma alias Saraswathi who inherited the A schedule properties from her deceased husband the last male holder Narayana ---- Makkithaya and who got the B. Schedule properties on darkhast sues for (1) delivery of possession of the said properties from defendants 1 to 3 free from the objections of defendants 4 to 6, (2) recovery of Rs.206-9-0 being the mesne profits claimed from 1.4.1934 up to date of plaint, excluding ----- assessment from defendants 1 to 3 and (3) recovery of ----- future mesne profits from date of plaint till date of deliver and costs of suit. Cause of action arose since 4-1-1934 in Kolnad village. Value of the claim is Rs.559-11-0

Plaint presented on 22-6-1936.

Particulars of valuation.

1. Relief for possession valued at ten times the assessment of Rs.30-5-0 = Rs.303-2-0 plus Rs.50-0-0 for value of buildings.		Rs.353- 2-0
2. Mesne profits claimed at		Rs.206- 9-0
	Total.	Rs.559-11-0

Decree:- This suit coming on the 7th and 25th days of August, 10, 23rd and 29th days of September and on the 12th and 19th days of October 1937 for final disposal -- before me, in the presence of Mr. B. Achutha Baliga, pleader for plaintiff and of messrs. C. Shama Shastri and M. V. Kolathaya, pleader for 1st defendant and the other ---- defendants being absent and declared exparte and having stood over for consideration till this day, this Court doth order and decree as follows:-

That the plaintiff's suit for possession of the plaint mentioned A schedule properties (described herebelow) and for mesne profits, past and future, be and the same hereby is dismissed.

That the defendants do deliver possession of the plaint mentioned B. Schedule properties (described herebelow) to the plaintiff.

That the parties do bear their own costs of this suit.

Description of the plaint properties as given in A and B schedules:-

Registration District - South Kanara.

Sub Registration District - Vittal.

Puttur Taluk - No.164 Kolnad village.

Schedule A.

Old S.No.	R.S.No.	Wet, Dry or garden	Extent.	Assessment as fixed at --- resettlement.
172/5	123/2	Wet	2.65	22- 6-0
172/4	123/3	Wet	0.18	0.13.0
172/1	123/7	"	0.77	1-12-0
172/2	123/8	"	0.54	2- 7-0

Schedule B.

457 (portion)	123/1	Wet	0.07	0. 9.0
457 -do-	123/4	"	0.08	0- 6-0
457 -do-	123/6	Wet	0.11	0- 4-0
380	123/9	Garden.	0.77	1-12-0

Costs of suit.

Plaintiff's.	Amount. Rs. A. P.	1st defendant's.	Amount Rs. A. P.
1. Stamp for plaint.	64-0- 0	1. Stamp for petitions.	2- 4-0
2. do. vakalatnama.	--	2. do. vakalatnama.	1- 0-0
3. do. exhibits.	--	3. do. exhibits.	1- 8-0
4. do. petitions.	1-8-0	4. Translation fee.	-
5. Translation fee.	--	5. Service of process.	1- 8-0
6. Service of process.	7-2-0	6. Subsistence for witnesses for attendance.	10- 0-0
7. Subsistence for witnesses for attendance.	11-2-0	7. Commissioner's fee.	-
8. Commissioner's fee.	-	8. Pleader's fee.	28- 0-0
9. Pleader's fee.	28- 0-0		
10. Process writing fees.	1- 0-0		
Total.	112-12-0	Total.	44- 4-0

Given under my hand and the seal of the Court this

25th day of October 1937. (Initd.) Y.V.R.

(Sd) B.L.N. Rai,
District Munsiff.

N.B. The parties should apply as soon as possible for the return of all the exhibits which they may wish to ---- preserve, as the record will be liable to be destroyed after three years or after six years from this date according to the nature of exhibit, under the rules for the destruction of records.

Sd/- xx xx xx
Examiner.

(True copy)

For Collector. 12 "

11.12.37

DRAFT FOR APPROVAL.

C.F. 16,

	Date.	Initials.
When received for fair copying		
When copied		
When examined		
When signed		
When despatched.		

SUBJECT :— Suits - (South Kanara) - Puttur D.M.C.O No 288/36 - Rotnad vgr - Late Narayana Mukhiliaya's property - Escheat - Adverse decision - Filing of appeal.

Not necessary.

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO* :—

Ltr No. A 4761/37 From the Coll of South Kanara No. Rej A3-893/34 3106/36 dated 11.XII 1937. Q.

" _____ " _____ " _____ " _____ 19____.

" _____ " _____ " _____ " _____ 19____.

Order / Resolution Ms. / Rout. No. 3925 dated 21/12/ 1937.

The Bd considers that no appeal need be filed in this case.

21/12/37

21.12.37

21/12/37

To the Coll of South Kanara with Ltr No A 4761/37 dtd 11/12/37 & 1) Depositions of witnesses and 2) one file containing copies of exhibits etc returned.

Desp Ackdt Jr Clerk.

21/12/37

No. 017 For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters not exceeding 2½ tolas or one ounce in weight or on which no acknowledgment is due. Rs. As. Date-stamp.

Received a registered * addressed to

Initials of Receiving Officer.

* Write here "letter," "post-card," "packet" or "parcel" with the word "Insured" before it when necessary.

If insured.

Insured for Rs. (in figures) (in words)

Insurance fee Rs. As. (in words).

Weight | Rates
Tolas

Name and address of sender.

Appeal time expires on 3/1/38

Suits - (South Kanara) - Puttur D.M.C O.S No 288/36 - Kolmadige - Late Narayana Makkitharaya's property - Escheat - Adverse decision - Filing of appeal.

A 4761/37 - Ref A 3-893/34 dt 11/12/37
3106/36

To A.S (L.R)

Please see the collr's letter at pp 1-2 cf.

2/ The collr's letter at pp 1-4 of of the D.P at (M) in which the property was declared escheat and orders were issued sanctioning the filing of the suit to recover possession of the property contains the facts of the case. The Dt Munsif admitted the claim of the govt for possession of the B schedule properties and dismissed the suit of the govt for the possession of the A schedule properties. Attention is invited to para 7 of the judgment (at pp 18-20 cf) which contains the findings of the Dt. Munsif on issues II and III at p17 cf. They relate to the validity of the mortgage executed by the widow, Thachamma and the decree obtained for arrears of interest due on the mortgage and the court sale

held that the mortgage deed was true, supported by consideration, valid and binding on the govt and also that the decree and the court sale (in pursuance of the decree) were valid and binding on the govt. The court decreed that the Ist defendant is entitled to the A schedule property. The plaintiff during govt work has dealt with all the points raised by the Dt. Munsif regarding issues II & III at pgs 4-9 of and is of opinion that an appeal may be filed. The Govt. P. Mangalore also thinks that an appeal can be filed with fair chance of success. ~~[illegible]~~

hw
16/12/17

The properties in Schedule A in respect of which the suit by the Govt for possession by right of escheat has failed, comprises 4.14 acres of wet land assessed at Rs 27.6.0.

recommendation to file an appeal in the matter

20.12.17. 20/12/17 J.S. (AJ)

The G.P.s recommend the filing of an appeal mainly on the ground that the Court framed issues II & III wrongly, throwing the burden of proving that the mortgage deed executed by the late Thekkamma was not valid on the Govt and that the Court shd have thrown the burden of proof on the Defts Govt rightly or wrongly the Defts had filed a suit on the basis of the mortgage & obtained possession & it is doubtful whether Civil Courts [redacted] will uphold these proceedings on nice distinctions regarding burden of proof.

Most of the detailed Criticism of the evidence is allowed by the G.P.'s view regarding burden of proof. The documents may not bear detailed scrutiny but the Dt. Munsiff's judgment (para 7. pp. 19-20) shows that a decision had to be reached regarding transactions which took place in 1880 & 1893

It seems to me that the
chances of succeeding appeal
are very slender